

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION**

RYAN DENNY,

Petitioner,

vs.

WARDEN PETE BLUDWORTH,
MONTANA BOARD OF PARDONS
AND PAROLE,

Respondents.

CV 22-32-H-BMM-KLD

ORDER

United States Magistrate Judge Kathleen DeSoto entered her Findings and Recommendations in this case on June 21, 2022. (Doc. 4.) Judge DeSoto made the following recommendations: that Mr. Denny's petition (Doc. 1) should be DISMISSED under Fed. R. Civ. P. 41(b) for failure to prosecute and that the motion to proceed in forma pauperis (Doc. 2) should be DENIED based upon Mr. Denny's failure to submit his inmate account statement; that the Clerk of Court should be directed to enter a judgment of dismissal by separate document; and that a certificate of appealability should be DENIED. (Doc. 4 at 5).

Neither party filed objections to the Findings and Recommendations. The parties have waived the right to de novo review thereof. 28 U.S.C. § 636(b)(1)(C).

Absent objection, this Court reviews findings and recommendations for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

Judge DeSoto applied the five-factor test in *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988) (quoting *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir.1986)), to determine that Denny’s failure to prosecute warrants dismissal of his case. (Doc. 4 at 2-4). In determining that a certificate of appeal should be denied, Judge DeSoto concluded that no reasonable jurist would suggest that the Court should go forward in further proceedings without Mr. Denny’s participation. (*Id.* at 4). The Court finds no error in Judge DeSoto’s Findings and Recommendations and adopts them in full.

ORDER

Accordingly, **IT IS ORDERED:**

1. Mr. Denny’s petition (Doc. 1) is **DISMISSED** under Fed. R. Civ. P. 41(b) for failure to prosecute. The motion to proceed in forma pauperis (Doc. 2) is **DENIED** based upon Mr. Denny’s failure to submit his inmate account statement.

2. The Clerk of Court is directed to a judgment of dismissal by separate document.

3. A certificate of appealability is **DENIED**.

DATED this 4th day of August, 2022.



Brian Morris, Chief District Judge
United States District Court